

105TH CONGRESS
1ST SESSION

H. R. 3048

To update and preserve balance in the Copyright Act for the 21st Century; to advance educational opportunities through distance learning; to implement the World Intellectual Property Organization Copyright Treaty, and Performances and Phonograms Treaty, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 13, 1997

Mr. BOUCHER (for himself and Mr. CAMPBELL) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To update and preserve balance in the Copyright Act for the 21st Century; to advance educational opportunities through distance learning; to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Digital Era Copyright
5 Enhancement Act”.

1 **SEC. 2. FAIR USE.**

2 (a) TRANSMISSIONS.—The first sentence of section
3 107 of title 17, United States Code, is amended by insert-
4 ing after “or by any other means specified in that sec-
5 tion,” the following: “and by analog or digital trans-
6 mission,”; and

7 (b) DETERMINATION.—Section 107 of title 17, Unit-
8 ed States Code, is amended by adding at the end thereof
9 the following:
10 “In making a determination concerning fair use, no inde-
11 pendent weight shall be afforded to—

12 “(1) the means by which the work has been
13 performed, displayed or distributed under the au-
14 thority of the copyright owner; or

15 “(2) the application of an effective technological
16 measure (as defined under section 1201(c)) to the
17 work.”.

18 **SEC. 3. LIBRARY/ARCHIVE EXEMPTIONS.**

19 Section 108 of title 17, United States Code, is
20 amended—

21 (1) by striking “Notwithstanding” at the begin-
22 ning of subsection (a) and inserting: “Except as oth-
23 erwise provided and notwithstanding”;

24 (2) by inserting after “copyright” in subsection
25 (a)(3): “if such notice appears on the copy or phono-

1 record that is reproduced under the provisions of
2 this section”;

3 (3) in subsection (b) by—

4 (A) deleting “a copy or phonorecord” and
5 inserting in lieu thereof: “three copies or
6 phonorecords”; and

7 (B) deleting “in facsimile form”; and

8 (4) in subsection (c) by—

9 (A) deleting “a copy or phonorecord” and
10 inserting in lieu thereof: “three copies or
11 phonorecords”;

12 (B) deleting “in facsimile form”; and

13 (C) inserting “or if the existing format in
14 which the work is stored has become obsolete,”
15 after “stolen,”.

16 **SEC. 4. FIRST SALE.**

17 Section 109 of title 17, United States Code, is
18 amended by adding the following new subsection at the
19 end thereof:

20 “(f) The authorization for use set forth in subsection
21 (a) applies where the owner of a particular copy or phono-
22 record in a digital format lawfully made under this title,
23 or any person authorized by such owner, performs, dis-
24 plays or distributes the work by means of transmission
25 to a single recipient, if that person erases or destroys his

1 or her copy or phonorecord at substantially the same time.
 2 The reproduction of the work, to the extent necessary for
 3 such performance, display, distribution, is not an infringe-
 4 ment.”.

5 **SEC. 5. DISTANCE LEARNING.**

6 (a) **TITLE CHANGE.**—The title of section 110 of title
 7 17, United States Code, is amended to read as follows:
 8 **“§ 110. Limitations on exclusive rights: Exemption of**
 9 **certain activities”;**

10 (b) **PERFORMANCE, DISPLAY AND DISTRIBUTION OF**
 11 **A WORK.**—Section 110(2) of title 17, United States Code,
 12 is amended to read as follows:

13 “(2) performance, display or distribution of a
 14 work, by or in the course of an analog or digital
 15 transmission, if—

16 “(A) the performance, display or distribu-
 17 tion is a regular part of the systematic instruc-
 18 tional activities of a governmental body or a
 19 nonprofit educational institution;

20 “(B) the performance, display or distribu-
 21 tion is directly related and of material assist-
 22 ance to the teaching content of the trans-
 23 mission; and

24 “(C) the work is provided for reception
 25 by—

1 “(i) students officially enrolled in the
 2 course in connection with which it is pro-
 3 vided; or

4 “(ii) officers or employees of govern-
 5 mental bodies as part of their official du-
 6 ties or employment;”

7 (c) EPHEMERAL RECORDINGS OF WORKS.—Section
 8 112(b) of title 17, United States Code, is amended by de-
 9 leting “transmit a performance or display of” and insert-
 10 ing in lieu thereof: “perform, display or distribute”.

11 **SEC. 6. LIMITATIONS ON EXCLUSIVE RIGHTS.**

12 (a) TITLE.—The title of section 117 of title 17, Unit-
 13 ed States Code, is amended to read as follows:

14 **“§ Limitations on exclusive rights: Computer pro-**
 15 **grams and digital copies”;**

16 (b) DIGITAL COPIES.—Section 117 of title 17, United
 17 States Code, is amended by inserting “(a)” before “Not-
 18 withstanding” and inserting the following as a new sub-
 19 section (b):

20 “(b) Notwithstanding the provisions of section 106,
 21 it is not an infringement to make a copy of a work in
 22 a digital format if such copying—

23 “(1) is incidental to the operation of a device in
 24 the course of the use of a work otherwise lawful
 25 under this title; and

1 “(2) does not conflict with the normal exploi-
 2 tation of the work and does not unreasonably preju-
 3 dice the legitimate interests of the author.”.

4 **SEC. 7. PREEMPTION.**

5 Section 301(a) of title 17, United States Code, is
 6 amended by inserting the following at the end thereof:

7 “When a work is distributed to the public subject to non-
 8 negotiable license terms, such terms shall not be enforce-
 9 able under the common law or statutes of any state to
 10 the extent that they—

11 “(1) limit the reproduction, adaptation, dis-
 12 tribution, performance, or display, by means of
 13 transmission or otherwise, of material that is
 14 uncopyrightable under section 102(b) or otherwise;
 15 or

16 “(2) abrogate or restrict the limitations on ex-
 17 clusive rights specified in sections 107 through 114
 18 and sections 117 and 118 of this title.”.

19 **SEC. 8. COPYRIGHT PROTECTION AND MANAGEMENT SYS-**
 20 **TEMS.**

21 Title 17, United States Code, is amended by adding
 22 at the end the following new chapter:

23 **“CHAPTER 12—COPYRIGHT PROTECTION AND**
 24 **MANAGEMENT SYSTEMS**

“Sec.

“1201. Circumvention of certain technological measures.

“1202. Integrity of copyright management information.

“1203. Civil remedies.

1 **“§ 1201. Circumvention of certain technological meas-**
 2 **ures**

3 “(a) CIRCUMVENTION CONDUCT.—No person, for the
 4 purpose of facilitating or engaging in an act of infringe-
 5 ment, shall engage in conduct so as knowingly to remove,
 6 deactivate or otherwise circumvent the application or oper-
 7 ation of any effective technological measure used by a
 8 copyright owner to preclude or limit reproduction of a
 9 work or a portion thereof. As used in this subsection, the
 10 term ‘conduct’ does not include manufacturing, importing
 11 or distributing a device or a computer program.

12 “(b) CONDUCT GOVERNED BY SEPARATE CHAP-
 13 TER.—Notwithstanding subsection (a), this section shall
 14 not apply with respect to conduct or the offer or perform-
 15 ance of a service governed by a separate chapter of this
 16 title.

17 “(c) DEFINITION OF EFFECTIVE TECHNOLOGICAL
 18 MEASURE.—As used in this section, the term ‘effective
 19 technological measure’ means a change in the data com-
 20 prising a work or a copy of a work transmitted in digital
 21 format so as to protect the rights of a copyright owner
 22 of such work or portion thereof under this title and
 23 which—

1 “(1) encrypts or scrambles the work or a por-
2 tion thereof in the absence of information supplied
3 by the copyright owner; or

4 “(2) includes attributes with respect to access
5 or recording status that cannot be removed without
6 degrading the work or a portion thereof.

7 **“§ 1202. Integrity of copyright management informa-**
8 **tion**

9 “(a) FALSE COPYRIGHT MANAGEMENT INFORMA-
10 TION.—No person shall knowingly provide copyright man-
11 agement information that is false, or knowingly publicly
12 distribute or import for distribution copyright manage-
13 ment information that is false, with intent to induce, facili-
14 tate, or conceal infringement.

15 “(b) REMOVAL OR ALTERATION OF COPYRIGHT
16 MANAGEMENT INFORMATION.—No person shall, without
17 authority of the copyright owner or other lawful authority,
18 knowingly and with intent to mislead or to induce or facili-
19 tate infringement—

20 “(1) remove or alter any copyright management
21 information;

22 “(2) publicly distribute or import for distribu-
23 tion a copy or phonorecord containing copyright
24 management information that has been altered with-

1 out authority of the copyright owner or other lawful
2 authority; or

3 “(3) publicly distribute or import for distribu-
4 tion a copy or phonorecord from which copyright
5 management information has been removed without
6 authority of the copyright owner or other lawful au-
7 thority: *Provided*, That the conduct governed by this
8 subsection does not include the manufacturing, im-
9 porting or distributing of a device.

10 “(c) DEFINITION OF COPYRIGHT MANAGEMENT IN-
11 FORMATION.—As used in this chapter, the term ‘copyright
12 management information’ means the following information
13 in electronic form as carried in or as data accompanying
14 a copy or phonorecord of a work, including in digital form:

15 “(1) The title and other information identifying
16 the work, including the information set forth in a
17 notice of copyright;

18 “(2) The name and other identifying informa-
19 tion of the author of the work;

20 “(3) The name and other identifying informa-
21 tion of the copyright owner of the work, including
22 the information set forth in a notice of copyright;

23 “(4) Terms and conditions for uses of the work;

1 “(5) Identifying numbers or symbols referring
2 to such information or links to such information;
3 and

4 “(6) Such other identifying information con-
5 cerning the work as the Register of Copyrights may
6 prescribe by regulation:

7 *Provided*, That the term ‘copyright management informa-
8 tion’ does not include the information described in section
9 1002, section 1201(c), or a chapter of this title other than
10 chapters one through nine of this title: *Provided further*,
11 That, in order to assure privacy protection, the term
12 ‘copyright management information’ does not include any
13 personally identifiable information relating to the user of
14 a work, including but not limited to the name, account,
15 address or other contact information of or pertaining to
16 the user.

17 **“§ 1203. Civil remedies**

18 “(a) CIVIL ACTIONS.—Any person aggrieved by a vio-
19 lation of section 1201(a) or 1202 may bring a civil action
20 in an appropriate United States district court against any
21 person for such violation.

22 “(b) POWERS OF THE COURT.—In an action brought
23 under subsection (a), the court—

1 “(1) may grant a temporary and a permanent
2 injunction on such terms as it deems reasonable to
3 prevent or restrain a violation;

4 “(2) may grant such other equitable relief as it
5 deems appropriate;

6 “(3) may award damages pursuant to sub-
7 section (c);

8 “(4) may allow the recovery of costs by or
9 against any party other than the United States or
10 an officer thereof; and

11 “(5) may award a reasonable attorney’s fee to
12 the prevailing party.

13 “(c) AWARD OF DAMAGES.—

14 “(1) IN GENERAL.—If the court finds that a
15 violation of section 1201(a) or 1202 has occurred,
16 the complaining party may elect either actual dam-
17 ages as computed under paragraph (2) or statutory
18 damages as computed under paragraph (3).

19 “(2) ACTUAL DAMAGES.—The court may award
20 to the complaining party the actual damages suf-
21 fered by him or her as a result of the violation, and
22 any profits of the violator that are attributable to
23 the violation and are not taken into account in com-
24 puting the actual damages, if the complaining party

1 elects such damages instead of statutory damages at
2 any time before final judgment is entered.

3 “(3) STATUTORY DAMAGES.—(A) The court
4 may award to the complaining party statutory dam-
5 ages for each violation of section 1201(a) of not less
6 than \$250 or more than \$2,500, as the court consid-
7 ers just, if the complaining party elects such dam-
8 ages instead of actual damages at any time before
9 final judgment is entered.

10 “(B) The court may award to the complaining
11 party statutory damages for each violation of section
12 1202 of not less than \$500 or more than \$20,000,
13 as the court considers just, if the complaining party
14 elects such damages instead of actual damages at
15 any time before final judgment is entered.

16 “(4) REPEATED VIOLATIONS.—In any case in
17 which the court finds that a person has violated sec-
18 tion 1201(a) or 1202 within three years after a final
19 judgment against that person for another such viola-
20 tion was entered, the court may increase the award
21 of damages to not more than double the amount
22 that would otherwise be awarded under paragraph
23 (2) or (3), as the court considers just.

24 “(5) INNOCENT VIOLATION.—The court may re-
25 duce or remit altogether the total award of damages

1 that otherwise would be awarded under paragraph
 2 (2) or (3) in any case in which the violator sustains
 3 the burden of proving, and the court finds, that the
 4 violator was not aware and had no reason to believe
 5 that its acts constituted a violation of section
 6 1201(a) or 1202.”.

7 **SEC. 9. CONFORMING AMENDMENTS.**

8 “(a) TABLE OF SECTIONS.—The table of sections for
 9 chapter 1 of title 17, United States Code, is amended by—
 10 (1) Revising the item relating to section 110 to
 11 read as follows:

“110. Limitations on exclusive rights: Exemption of certain activities”;

12 and

13 (2) Revising the item relating to section 117 to
 14 read as follows:

“117. Limitations on exclusive rights: computer programs and digital copies”.

15 “(b) TABLE OF CHAPTERS.—The table of chapters
 16 for title 17, United States Code, is amended by adding
 17 at the end the following:

“12. Copyright Protection and Management Systems 1201”.

18 **SEC. 10. EFFECTIVE DATES.**

19 “(a) IN GENERAL.—Sections one through seven and
 20 section 9(a) of this Act, and the amendments made by
 21 sections one through seven and section 9(a) of this Act,
 22 shall take effect on the date of enactment of this Act.

1 “(b) WIPO TREATIES.—Section 8 and section 9(b)
2 of this Act, and the amendments made by section 8 and
3 section 9(b) of this Act, shall take effect on the date on
4 which both the World Intellectual Property Organization
5 Copyright Treaty and the World Intellectual Property Or-
6 ganization Performances and Phonograms Treaty have
7 entered into force with respect to the United States.

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